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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : David Stein

Serial No. : 09/998,618 Examiner: Nguyen, Kien T.

Filed : November 30, 2001 Group Art Unit: 3714

For : WATERPROOF LYRICS DISPLAY

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING (37 C.F.R. 1.8a)

I hereby certify that the attached:

1. Response to Final Office Action dated 07/05/2005
2. Reference copy of the USPTO Board of Patent Appeals January 13, 2005 decision on Appeal No. 2004-0953, Application No. 09/215,593

(Along with any paper(s) referred to as being attached or enclosed) and this Certificate of Mailing are being deposited with the United States Postal Service on the date indicated below with sufficient postage as first-class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Respectfully submitted  
DAVID STEIN

Dated: Oct. 4, 05

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RESPONSE TO FINAL OFFICE ACTION DATED 07/05/2005

Dear Kien T. Nguyen,

Thank you for your office action dated 07/05/2005, concerning my waterproof lyrics display to aid singing in the shower. As you'll recall, my preferred embodiment comprises a waterproof songbook slimly proportioned and flexibly bound to enable support solely by water adhesion on a shower wall streaming with water.

In the office action, my claims 1,2, 5, 24, 25, 29, 35, 44, and 46-48 were rejected under 35 U.S.C. 103(a) as being unpatentable over Logan U.S. Patent 6,449,460 in view of Kramer U.S. Patent 5,607,339.

Logan, you'll recall, is a teaching kit meant for a classroom of children; it comprises audio cassettes and a ringbinder of pages which are not waterproof. And Kramer is a waterproof bathtub toy comprising multiple small cutouts of foam (doll-shapes, tree-shapes, etc.), which when wetted can stick to an otherwise dry surface adjacent to a bathtub.

In his Claim Rejections the examiner combines various features of Logan and Kramer to argue my claims as obvious. Features cited from Logan are a "songbook" (2.12) of "paper-thin materials" (2.13) having a "binder" (2.14). Features cited from Kramer are "at least one sheet" (2.19) of "water-proof material such as polymer plastic" (2.20) "removably attached to a shower surface solely by a layer of water" (2.21), that is by "water adhesion" (2.24).

However, there is no suggestion in Logan of use in a shower. And (leaving aside all argument (3.14 - 3.17) whether a bathtub wall is also a shower wall) there is no suggestion in Kramer of use on a surface *streaming* with water from a downpouring shower. I emphasize the word *streaming*. It indicates not just a surface with "water thereon" (3.19) as in Kramer, but a surface being forcefully flooded, on which Kramer's small thick shapes of foam are immediately washed away. (See affidavit previously submitted.) It indicates not "merely an intended use of the user"